

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ANDREW ISAAC LLOYD,)	
)	
Petitioner,)	
)	1:16-CV-627
v.)	1:12-CR-449-2
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The United States Magistrate Judge filed a Recommendation in accordance with 28 U.S.C. § 636(b) and, on August 23, 2019, it was served on the parties. Through counsel, the petitioner objected to the Recommendation, contending that the Magistrate Judge erred in concluding that the petitioner's claim was time-barred. Doc. 71. In light of a recent unpublished opinion from the Fourth Circuit Court of Appeals that issued after the entry of the Recommendation, the petitioner's objection may have merit. *See United States v. Bennerman*, No. 17-6544, 2019 WL 4200974 (4th Cir. Sept. 5, 2019).


However, the court need not definitively resolve this issue because even if the petitioner's claim was not time-barred, it would still fail on the merits. As the Magistrate Judge accurately noted as part of an alternative finding, Doc. 69 at 4, a "Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c)." *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019). The petitioner, in fact, acknowledges this holding, but he indicates that he has objected in order to preserve the matter for further appellate review. Doc. 71 at 5.

The Court has reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report as to the merits of the petitioner's § 2255 claim. The Court therefore adopts the Magistrate Judge's Recommendation insofar as it finds that the petitioner's claim fails on the merits.

IT IS THEREFORE ORDERED that:

1. The stay is **LIFTED**;
2. The Government's motion to dismiss, Doc. 46, is **GRANTED**;
3. Petitioner's motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255, Doc. 40, is **DISMISSED**; and
4. This action is dismissed with prejudice.
5. A judgment dismissing this action will be entered contemporaneously with this Order.
6. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable material procedural ruling, a certificate of appealability is not issued.

This the 23rd day of September, 2019.


UNITED STATES DISTRICT JUDGE